

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DMJ ASSOCIATES, L.L.C.,

Served November 26, 2013

Plaintiff,

-against-

CV-97-7285 (Irizarry, J.) (Levy, M.J.)

CARL A. CAPASSO, et al.,

ORAL ARGUMENT REQUESTED

Defendants.

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EXXON MOBIL CORPORATION and
QUANTA RESOURCES CORPORATION,

Defendants/ Third-
Party Plaintiffs,

-against-

ACE WASTE OIL, INC., et al.,

Third-Party
Defendants.

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NOTICE OF MOTION

PLEASE TAKE NOTICE that, upon the Memorandum of Law in Support of Third Party Defendant New York City Transit Authority's Motion to Dismiss, the Declaration of Gordon J. Johnson (with exhibits), and the papers heretofore filed in this action, Third-Party Defendant New York City Transit Authority, by its attorneys, Lawrence C. Jenkins and Gordon J. Johnson, will move this Court for an order, pursuant to Federal Rule of Civil Procedure 12(b)(6), dismissing the Fourth Amended Third-Party Complaint as against the New York City Transit Authority for failure to state a claim upon which relief can be granted, on the grounds that the claim for contribution (Count II) is time-barred; that the claim for cost recovery (Count I) is

barred because the Third-Party Plaintiffs only have a contribution claim; that the claim (Count III) seeking a declaratory judgment fails because it is predicated on the first two claims; and in the alternative with respect only to the contribution claim of Third-Party Plaintiff Quanta Resources Corporation, its claim (Count II) is barred because of its egregious past behavior in the operation and abandonment of the Quanta site.

Pursuant to Local Rule 6.1(b), papers in opposition to this motion must be served 14 days after service of the moving papers, or at such other time as required by the Court.

PLEASE TAKE FURTHER NOTICE that Third-Party Defendant New York City Transit Authority requests oral argument on this motion.

Dated: New York, New York
November 26, 2013

Yours, etc.,

s/Gordon J. Johnson

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